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LINDA SORENSEN (SBN: 72753)
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Attorneys for Chapter 7 Trustee
PAUL J. MANSDORF

UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re
PICONGEN WIRELESS INC.,

Debtor.

Case No. 12-48131 RLE 7

Chapter 7

DECLARATION OF JEREMY W. KATZ IN
SUPPORT OF TRUSTEE'S OPPOSITION TO
SOMEONE'S MOTION TO CONVERT CASE
FROM CHAPTER 7 TO CHAPTER 11

Date: February 13, 2013
Time: 10:00 a.m.
Place: Courtroom 201

The Honorable Roger L. Efremsky, United
States Bankruptcy Judge

I, Jeremy W. Katz, declare:

1. I am a partner in Pinnacle Law Group LLP, attorneys for Paul Mansdorf, Chapter 7 trustee ("Trustee"). I have personal knowledge of the facts contained in this declaration except for those I have learned as and for those I believe them to be true, and if called as a witness, could and would competently testify as to them. I make this declaration in support of the Trustee's opposition to the Debtor's motion to convert the case to a Chapter 11.

2. Attached hereto as Exhibit "A" for the Court's reference is a copy of Patrick Costello's letter to Messrs. Kluesing and Bartlett dated June 19, 2012, in which Mr. Costello

1 states that he represents Sai Manapragada, president of Picongen Wireless, Inc. and informing
2 them that if Picongen becomes a Chapter 7 Debtor, Mr. Manapragada will “likely seek to acquire
3 the assets of the Company either on his own behalf or on behalf of an entity in which he may
4 have an interest.”

5 3. Attached hereto as Exhibit “B” is an email string, in reverse chronological order,
6 between Mr. Costello and me that took place on January 31, 2013. I begin by asking Mr. Costello
7 to let me know where the Debtor’s assets are located. Mr. Costello responds that he only
8 represents the Debtor for the limited purpose of filing the motion to convert, and nothing else.
9 Mr. Costello states that he is forwarding my email to Mr. Manapragada. I then ask whether I
10 should be in touch with Mr. Manapragada directly and if so, I need his contact information.

11 4. Attached as Exhibit “C” is an email string, in reverse chronological order, between
12 attorney Robert Simon and me that took place between February 1 and 4, 2013. Mr. Simon
13 informs me that the Debtor’s equity holders will cooperate and the physical assets are located in
14 Mr. Manapragada’s home in Hayward, and that Mr. Manapragada will make them available at a
15 mutually agreeable time. Mr. Simon authorizes me to contact Mr. Manapragada directly to make
16 arrangements. I have redacted Mr. Manapragada’s home address and telephone number. I then
17 ask Mr. Simon for the location of the business records, intellectual property, patent applications,
18 etc. and the promissory note(s). Mr. Simon informs me he will ask his clients. He then tells me
19 that they do not have the books, records, or original notes and that I should contact David Bartlett
20 and Dale Kluesing, and attorney Groover concerning the patent applications. I ask Mr. Simon
21 who is now in charge of the Debtor (the Court will recall that there was a change in management
22 just before the auction), and Mr. Simon tells me he just represents a majority of the equity
23 holders.

24 5. Attached as Exhibit “D” is an email string, in reverse chronological order, between
25 Mr. Costello and me that took place on February 5, 2013. Because he filed the motion to convert
26 on behalf of the Debtor, I ask Mr. Costello to tell me where the assets are located and let him
27 know that the failure to cooperate is one of the grounds for denying the motion to convert. Mr.
28 Costello’s response speaks for itself.

1 I declare under penalty of perjury pursuant to the laws of the United States that the
2 foregoing is true and correct.

3 Executed this 6th day of February 2013, at San Francisco, California.

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5 Jeremy W. Katz
6 JEREMY W. KATZ
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PATRICK M. COSTELLO
Attorney at Law

2225 E. BAYSHORE ROAD, SUITE 200
PALO ALTO, CA 94303-3220

MAILING ADDRESS:
PMB# 551, 270 REDWOOD SHORES PKWY
REDWOOD CITY, CA 94065

Phone: 650 320 1688
Facsimile: 650 320 1687
Mobile: 650 269 1898
pcostello@vectislawgroup.com

June 19, 2012

Via Electronic Mail and First Class Mail

Alvin Dale Kluesing
2275 Springwood Drive
Auburn, AL 36830
(E-mail: dkluesing@mindspring.com)

David Bartlett, Esq.
61 Faith Lane
Tracy, CA 95377-1140
(E-mail: dave@debartlett.com)

Re: Picongen Wireless, Inc.

Dear Messrs. Kluesing and Bartlett:

I am bankruptcy counsel for Mr. Sai Manapragada, the President of Picongen Wireless, Inc. (the "Company"). I have been engaged by Mr. Manapragada to advise him concerning, among other matters, the initiation of Chapter 7 relief for the Company.

The Financial Condition and Prospects of the Company

As I assume you appreciate, the Company's present financial condition is dire. The Company has no funds to execute on a business plan and owes substantial accrued and unpaid compensation to Messrs. Kluesing and Manapragada. The Company is indebted to Ronald Moeckel under a note or notes in the principal amount of at least \$150,000.00; these notes are now past due and Mr. Moeckel has made demand for payment. The Company is further also seriously delinquent on its tax obligations to the State of Delaware. The Company has no apparent ability to satisfy any of these liabilities, much less execute on a business plan. The Company may have creditors and liabilities in addition to those identified above, but Mr. Manapragada is unable to assess such additional liabilities without access to the books and records of the Company in your the possession.

EXHIBIT

A

Mr. Manapragada believes that the current intellectual property of the Company could have significant value if developed according to an adequately funded business plan, but that any such business plan requires a substantial additional equity investment in the Company. Any such additional equity investment would no doubt require a substantial dilution of your equity in the Company.

I understand that Mr. Manapragada has discussed the possibility of additional equity investments with you, but the dilutive effect of such potential transactions has to date proven unacceptable to you. Given your unwillingness to accept the terms of such a dilutive transaction, it appears that the Company has no realistic prospect of capitalizing on its current intellectual property and should seek to liquidate through a bankruptcy proceeding before the value of the Company's assets dissipates entirely.

Mr. Manapragada is prepared to support a Chapter 7 petition by the Company to be filed no later than July 15, 2012 unless the Company's board and majority of shareholders accept the dilutive terms likely to be required by a "new money" investor. Mr. Manapragada has spoken with fellow directors Ronald Moeckel and Kumar Yempati, and he believes that a majority of directors are prepared to authorize the filing of a Chapter 7 petition on behalf of the Company if you continue to reject the terms necessary to secure an additional adequate equity investment. A Chapter 7 filing will, of course, likely mean a total loss for all existing equity holders, but such loss is candidly attributable to your refusal to agree to a dilutive transaction.

Alternatives

The current state of affairs is unacceptable: the Company cannot execute on any business plan because it lacks the funds to do so while the value of its assets steadily dissipates. From Mr. Manapragada's perspective, the choices for proceeding forward are:

1. You agree to the terms for new equity funding notwithstanding that such terms may significantly dilute of your current equity position; or
2. The Company files for Chapter 7 relief before the value of its intangible property dissipates entirely.

If you have other alternatives to preserve the value of the Company, please feel free to present them to Mr. Manapragada. But if you cannot quickly present any viable alternative, Mr. Manapragada intends to call a meeting of the board of directors for the purpose of authorizing him to initiate a Chapter 7 proceeding.

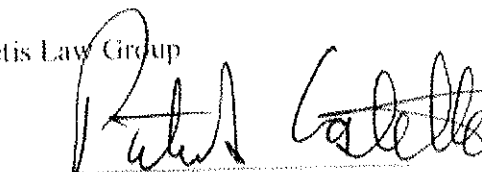
Messrs. Khuesing and Bartlett
June 19, 2012
Page 3 of 3

As a matter of full disclosure, in the event that Picongen becomes a Chapter 7debtor, Mr. Manapragada is likely to seek to acquire the assets of the Company either on his own behalf or on behalf of an entity in which he may have an interest.

Very Truly Yours,

Veetis Law Group

By:

A handwritten signature in black ink, appearing to read "Patrick Costello", written over a horizontal line.

Patrick Costello

Attorneys for Mr. Sai Manapragada

Jeremy Katz

From: Jeremy Katz
Sent: Thursday, January 31, 2013 12:55 PM
To: 'Patrick Costello'
Cc: mansdorfftrustee@sbcglobal.net
Subject: RE: Picongen Wireless 12-12-48131

I understand, but we need to know where the assets are located. If I should be in touch with Mr. Manapragada directly, let me know. If so, I will need his contact information. Thanks again. Jeremy

Jeremy W. Katz
Pinnacle Law Group LLP
425 California Street, Suite 1800
San Francisco, CA 94104
Telephone: (415) 394-5700
Facsimile: (415) 394-5003
Email: jkatz@pinnaclelawgroup.com
Web: www.pinnaclelawgroup.com

From: Patrick Costello [mailto:pcostello@vectislawgroup.com]
Sent: Thursday, January 31, 2013 11:45 AM
To: Jeremy Katz
Cc: mansdorfftrustee@sbcglobal.net
Subject: RE: Picongen Wireless 12-12-48131

Jeremy,

I represented the Debtor only for the limited purpose of filing the motion to convert to Chapter 11: I do not represent the Debtor other than for that limited purpose. Nonetheless, I am forwarding your request to Mr. Manapragada who was recently appointed an officer and director of the Debtor.

I note that while you say that the trustee needs to be able to deliver the physical assets, the binding term sheet provided for the sale on an "as is, where is" basis.

Patrick M. Costello
VECTIS LAW GROUP
2225 E. Bayshore Road, Suite 246
Palo Alto, CA 94303
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From: Jeremy Katz [mailto:jkatz@pinnaclelawgroup.com]
Sent: Thursday, January 31, 2013 10:30 AM

EXHIBIT B

To: Patrick Costello
Cc: mansdorfftrustee@sbcglobal.net
Subject: Picongen Wireless 12-12-48131

Patrick—

The bankruptcy estate needs to be able to deliver the physical assets being purchased by Sigma Group. Please let me know where the Debtor's books and records, intellectual property, computers, TVs, etc. are located and whom to contact and that person's contact information in order to make arrangements to get them.

Thanks. Jeremy

Jeremy W. Katz
Pinnacle Law Group LLP
425 California Street, Suite 1800
San Francisco, California 94104
(415) 394-5700 Phone
(415) 394-5003 Fax
jkatz@pinnaclelawgroup.com
www.pinnaclelawgroup.com

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Jeremy Katz

From: Robert Simon <rsimon@bgsfirm.com>
Sent: Monday, February 04, 2013 4:19 PM
To: Jeremy Katz
Cc: pcostello@vectislawgroup.com
Subject: RE: Picongen

Currently, I just represent some of the equity holders, a majority of them, but not all of them. I don't represent Bartlett, Dale Kluesing, or the Avarrett Trust. I also don't represent Mr. Groover.

Robert A. Simon

BARLOW GARSEK & SIMON, LLP

3815 Lisbon Street
Fort Worth, TX 76107
817.731.4500 (ext. 118)
817.731.6200 (fax)

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From: Jeremy Katz [mailto:jkatz@pinnaclelawgroup.com]
Sent: Monday, February 04, 2013 6:11 PM
To: Robert Simon
Cc: pcostello@vectislawgroup.com
Subject: RE: Picongen

Who is now in charge of the Debtor?

Jeremy W. Katz
Pinnacle Law Group LLP
425 California Street, Suite 1800

EXHIBIT C

San Francisco, CA 94104
Telephone: (415) 394-5700
Facsimile: (415) 394-5003
Email: jkatz@pinnaclelawgroup.com
Web: www.pinnaclelawgroup.com

From: Robert Simon [<mailto:rsimon@bgsfirm.com>]
Sent: Monday, February 04, 2013 4:10 PM
To: Jeremy Katz
Cc: Patrick Costello (pcostello@vectislawgroup.com)
Subject: RE: Picongen

Jeremy,

My clients do not have the books, records, or original notes signed by Mr. Manapragada. I would contact David Bartlett and Dale Kluesing. They were in charge of the Debtor until a few days before the hearing on January 22, 2013. Robert Groover would have the best information on the patent applications.

Robert A. Simon

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From: Jeremy Katz [<mailto:jkatz@pinnaclelawgroup.com>]
Sent: Monday, February 04, 2013 3:48 PM
To: Robert Simon
Subject: RE: Picongen

Mr. Simon—

Have you spoken to your clients? We need to know where the assets not at Mr. Manapragada's home are located. Please advise.

Jeremy W. Katz
Pinnacle Law Group LLP
425 California Street, Suite 1800
San Francisco, CA 94104
Telephone: (415) 394-5700
Facsimile: (415) 394-5003
Email: jkatz@pinnaclelawgroup.com
Web: www.pinnaclelawgroup.com

From: Robert Simon [<mailto:rsimon@bgsfirm.com>]
Sent: Friday, February 01, 2013 9:33 AM
To: Jeremy Katz
Subject: RE: Picongen

I don't know. I will ask my clients.

Robert A. Simon

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From: Jeremy Katz [<mailto:jkatz@pinnaclelawgroup.com>]
Sent: Friday, February 01, 2013 11:17 AM
To: Robert Simon
Subject: RE: Picongen

Thank you. Where are the business records, including, but not limited to, information regarding the intellectual property, patents, patent applications, etc., and who is in possession of the promissory note(s)?

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Facsimile: (415) 394-5003
Email: jkatz@pinnaclelawgroup.com
Web: www.pinnaclelawgroup.com

From: Robert Simon [<mailto:rsimon@bgsfirm.com>]
Sent: Friday, February 01, 2013 9:12 AM
To: Jeremy Katz
Cc: Patrick Costello (pcostello@vectislawgroup.com); Sai Manapragada (saimanapragada@sbcglobal.net); A Sahu (asahu_98@yahoo.com)
Subject: Picongen

Jeremy,

The Debtor's equity holders will cooperate with the Trustee regarding the sale of assets to the Sigma Group. The physical assets are not very impressive. They consist of some used computers, WiFi cards, and a couple of TV sets. They are set aside in Sai Manapragada's garage in Hayward, California. Mr. Manapragada will make them available for pick-up at a mutually agreeable time. However, since they are located at his home, you or the trustee will have to call him and make arrangements to meet him for the hand-over. Whoever comes to get the stuff will need a vehicle large enough for a few computers and TV sets. I authorize you to contact Mr. Manapragada directly to make the necessary arrangements.

Mr. Manapragada's home is located at _____
His telephone number is _____

Robert A. Simon

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Jeremy Katz

From: Patrick Costello <pcostello@vectislawgroup.com>
Sent: Tuesday, February 05, 2013 12:46 PM
To: Jeremy Katz
Subject: RE: Picongen Wireless 12-48131

Jeremy,

I categorically reject your arguments and threat.

As you know, I appeared as special counsel for the Debtor for the limited purpose of filing the motion to convert the Chapter 11 and for no other purpose, and you cannot treat me as the Debtor's general bankruptcy counsel responsible for complying with the Debtor's Section 704 duties because you have now run into a problems with closing a sale to Sigma - - problems that the trustee should have considered when it was evaluating which was the best bid. As you know, the highest dollar bid is by no means the best bid, and in accepting Sigma's bid, the trustee apparently failed to consider all of the other factors relevant to a determination of the best bid and is now experiencing the consequences of such failure.

The schedules were signed by Dale Kleusing - -he acted as the responsible person in signing the schedules and presumably had access to the Debtor's books and records in preparing and signing the schedules under penalty of perjury, and you should look to him for the Debtor's compliance with its duties to cooperate with respect to the books and records and location of the Manapragada notes. As you are aware, Kluesing and Barlett were in exclusive control of the Debtor and its assets as of the commencement of the case and the time that the trustee assumed exclusive management and control over the Debtor's assets, and it is to these individuals that the trustee must look to for information concerning the location of the books and records: current officers of the Debtor only assumed their duties after the trustee had assumed exclusive control over all of the Debtor's assets and are looking to the trustee to return those assets to the DIP upon conversion of the case to Chapter 11. Until the trustee turns over possession of the Debtor's assets, current management has no knowledge as to current location of assets (other than has previously been disclosed) over which the trustee has had exclusive control since the order for relief.

Further, the trustee conducted a 341 and had an opportunity to examine the Debtor's responsible person. Mr Kluesing did not appear, but the trustee did talk to an attorney that presumably represented either the Debtor or Mr Kluesing, and that is the attorney to whom you should address your questions and threats. The 341 examination was the statutorily mandated venue for the trustee to ask where the books and records and the Manapragada notes were located, but the trustee never asked those questions. Since Mr. Kluesing did not appear for examination, the trustee could have either continued the examination or moved to dismiss the case, but the trustee did neither: instead, the trustee was satisfied with the state of affairs and concluded the 341 examination. If the trustee wants to allege any lack of cooperation by new management that only came into place well after the trustee assumed exclusive control over all of the Debtor's assets, the trustee will have to first explain his complete failure take even minimal statutory efforts to locate and secure those assets through the 341 examination.

I presume from the tenor of your message and threat that Sigma is making excuses for not closing and the trustee is looking to shift the blame for an ultimate failure to close from the trustee for his own omissions and poor business judgment to the current "out of possession management" of the Debtor. Weaknesses in attempting to shift fault to the newly appointed "out of possession" management include:

1. Books and records are clearly not part of the Purchased Assets. Sigma is not entitled to them. In any case, Mr. Kluesing is the proper person to ask as to the location of these records.
2. Intellectual property is by definition intangible, so requesting its location is a non sequitar. Besides, if you wanted details concerning the patents beyond the termsheet, you are well aware that Mr. Groover claims the most complete knowledge of the patents.
3. It would be astounding if Sigma based a claim that it was not obligated to close based on the absence of the original notes since Sigma's original bid did not include the notes. Equally astounding is the fact that given that concession, the trustee took no action to preserve those notes for the estate. But ultimately, Kluesing/Bartlett had possession of the notes and the trustee must look to them for the originals to the extent that the binding LOI actually required delivery of originals. I do not believe that LOI did so.

Patrick M. Costello
VECTIS LAW GROUP
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Palo Alto, CA 94303
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From: Jeremy Katz [mailto:jkatz@pinnaclelawgroup.com]
Sent: Tuesday, February 05, 2013 10:20 AM
To: Patrick Costello
Subject: Picongen Wireless 12-48131

Patrick—you filed the motion to convert the case on behalf of the Debtor. As counsel for the Debtor, please tell me where the Debtor's business records, intellectual property, and promissory notes signed by Mr. Manapragada are located. If that information is not forthcoming in short order, that means the Debtor is not cooperating with the Trustee, see, e.g., section 704, which is only one of the grounds for the court to deny a motion to convert. Jeremy

Jeremy W. Katz
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